A

CHOONG KWEE SANG

v.

CHOONG KWEE KEONG

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
ZAINUN ALI JCA
HASAN LAH JCA
[CIVIL APPEAL NO: J-02-44-1997]

C

20 JUNE 2008

LAND LAW: *Ownership - Beneficial ownership - Dispute - Claim by appellant as to beneficial and equitable ownership of subject properties - Whether appellant purchased properties with his own money - Documentary evidence - Whether there was a resulting trust in appellant's favour*

D

TRUSTS: *Resulting trust - Circumstances when such a trust would arise - Claim by appellant as to beneficial and equitable ownership of subject properties - Whether appellant purchased properties with his own money - Documentary evidence - Whether there was a resulting trust in appellant's favour*

E

In this appeal, the appellant failed in the court below in the reliefs sought, *inter alia*, that he was the beneficial and equitable owner of two properties ('subject properties'). The trial judge dismissed the appellant's claim, finding that: (i) the appellant's mother ('deceased') did not hold the subject properties on trust in the appellant's favour; (ii) the appellant's income made it impossible for him to have afforded the subject properties and that, thus, he could not have paid for them; and (iii) in fact the deceased was the legal and beneficial owner of the subject properties. It was not in dispute that the subject properties were registered in the name of the deceased. However, it was the appellant's case that since the subject properties were purchased with his money, the proprietorship thereof was governed by the equitable doctrine of 'resulting trust' in his favour. The issues requiring determination were: (a) whether the appellant could prove by oral or documentary evidence that he purchased the subject properties with his own money; and (b) if the answer to (a) was in the affirmative, whether in the light of surrounding circumstances the fact that it was registered in the deceased's name gave rise to a resulting trust in the appellant's favour.

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I

Held (dismissing the appeal)
Per Zainun Ali JCA delivering the judgment of the court:

(1) The trial judge was correct in holding that the appellant did not purchase the subject properties since the sources of the fund did not show the appellant as a contributor. The documentary evidence was clear. The appellant could not have purchased the first property (the Jalan Gelam house) for $38,000 from savings of his salary and allowances since his total nett earnings as shown in his income tax assessment 1969-1972 was $9,274.91. His claim that he purchased the second property (the Jalan Balau house) for $74,000 from savings was also dubious. This was because his total nett earnings as shown in his income tax returns for 1973-1978 was $88,023.42 – out of which $17,627.36 was stashed away in a fixed deposit in a bank – thus, his total earnings available at the time of purchase *ie*, on 16 April 1978, was $70,396. Taking into account his financial commitments, even if there were savings it would be a herculean task indeed for the appellant to have to come up with the purchase price of $74,000 (not including stamp duty and legal fees) to purchase the Jalan Balau house. This was not even taking into account the fact that the appellant lost his job in August 1980, making his financial position even more precarious. Quite apart from his failure to show he had the means to purchase the subject properties, the appellant had also failed to show the plausibility of the existence of a resulting trust in his favour when the subject properties were registered in the name of the deceased. Even if the appellant successfully proved that he paid for the subject properties with his own money, he had to go one step further and show that they were registered in the deceased's name not as a gift *per se* to her, but as his trustee holding it in his favour on a resulting trust. In the instant case, the appellant had not only failed to dislodge the burden of having to prove he paid for the subject properties, he had also failed the additional burden of proving the deceased held them in trust for him. (paras 57, 58, 59 & 60)

(2) At the time of the purchase of both the subject properties by the appellant's father, there was not an implied, let alone an express, certainty that it was upon the appellant that the beneficial interest lay. The only clear evidence was that the purchases were made by the appellant's father, which evidence

had neither been disputed nor rebutted. Following that, nothing was in evidence as to how the appellant's interest could have come about which must supersede that of the deceased's. The appellant had indicated that he paid for the outgoings, assessment and quit rent and that he had possession and control of the subject properties merely on the flimsy account that he had in his possession the title to them. This, however, was not evidence that he owned the subject properties. The appellant only made a bare assertion that he had indicated to the deceased that even if he had the subject properties registered in her name, he had made it clear to her that it was not intended as a gift. In fact, his very own evidence that he took his father's instructions to have the subject properties registered in the deceased's name considerably strengthened the proposition that it was his father who paid and owned the subject properties and was in control thereof. Would the appellant execute his father's instructions to have the subject properties registered in the deceased's name if it were true that the subject properties were his, however filial a son he was? He might as well make an outright gift to his mother. But if he had no such intention the appellant would surely have some documentary or written evidence to protect his hard-earned assets. But none was forthcoming. The appellant merely said that he had told the deceased that although the subject properties were registered in her name, they were to be held by her on trust for him. The deceased, however, disputed the appellant's claim by filing a suit against him in the Sessions Court on this very point, further strengthening the presumption of the resulting trust having been rebutted. The deceased, in seeking to recover possession of the Jalan Balau house, denied that the appellant paid the outgoings, assessment and the quit rent. She said it was her husband, the appellant's father, who paid the same during his lifetime and that after he died, she paid for them. In view of the foregoing, the appellant had failed to prove that it was he who paid for the subject properties. In that connection, the question of a resulting trust in the appellant's favour did not arise at all. Consequently, there was no reason at all for appellate intervention in this case. *Loo Hon Kong v. Loo Kim Lim* (dist). (paras 74, 75, 76, 77, 78, 79, 80, 81, 82 & 83)

Bahasa Malaysia *Translation Of Headnotes*

Dalam rayun ini, perayu gagal di mahkamah bawahan untuk mendapat relif-relif yang dicari, iaitu antara lain, bahawa dia ialah tuan punya benefisial dan berekuiti dua hartanah ('hartanah tersebut'). Hakim perbicaraan menolak tuntutan perayu, dan memutuskan bahawa: (i) ibu perayu ('simati') tidak memegang hartanah tersebut atas amanah untuk perayu; (ii) pendapatan perayu menjadikan ia mustahil untuknya mampu hartanah tersebut dan, oleh itu, dia tidak dapat membayar untuknya; dan (iii) sebenarnya, simati ialah tuan punya di sisi undang-undang dan benefisial hartanah tersebut. Ia tidak dipertikaikan bahawa hartanah tersebut didaftar di bawah nama simati. Bagaimanapun, ia adalah kes perayu bahawa oleh kerana hartanah tersebut dibeli dengan duitnya, kepunyaan hartanah tersebut ditentukan oleh doktrin berekuiti 'amanah berbangkit' yang memihak kepadanya. Isu-isu yang perlu ditentukan ialah: (a) sama ada perayu dapat membuktikan melalui keterangan oral dan dokumentar bahawa dia beli hartanah tersebut dengan duitnya sendiri; dan (b) jikalau jawapan kepada (a) mengiakan, sama ada berpandukan keseluruhan keadaan kes fakta bahawa hartanah tersebut didaftarkan di atas nama simati mewujudkan amanah berbangkit untuk pihak perayu.

Diputuskan (menolak rayuan)
Oleh Zainun Ali HMR menyampaikan penghakiman mahkamah:

(1) Hakim perbicaraan betul dalam memutuskan bahawa perayu tidak membeli hartanah tersebut kerana sumber tabung tidak menunjukkan perayu sebagai penyumbang. Keterangan dokumentar adalah jelas. Perayu tidak dapat membeli hartanah pertama (rumah Jalan Gelam) untuk $38,000 dari simpanan gaji dan elaunsnya kerana jumlah nett pendapatannya seperti ditunjuk dalam taksiran cukai pendapatannya pada tahun 1969-1972 ialah $9,274.91. Dakwaanya bahawa dia membeli hartanah kedua (rumah Jalan Balau) untuk $74,000 dari simpanannya juga tidak meyakinkan. Ini adalah kerana jumlah nett pendapatannya seperti ditunjuk dalam penyata cukai pendapatannya pada tahun 1973-1978 ialah $88,023.42 – dari mana $17,627.36 disimpan dalam simpanan tetap di dalam bank – oleh itu, pendapatan yang ada pada masa pembelian, iaitu 16 April 1978, berjumlah $70,396. Mengambil kira komitmen kewangannya, walaupun perayu ada simpanan, ia merupakan tugas yang sangat besar bagi perayu untuk mendapat duit bagi harga pembelian berjumlah $74,000 (tidak

memasuki duti setem dan bayaran guaman) untuk membeli rumah Jalan Balau. Ini tidak mengambil kira bahawa perayu telah hilang kerjanya pada Ogos 1980, yang membuat kedudukan kewangannya lagi terjejas. Selain kegagalannya untuk menunjukkan bahawa dia berkemampuan membeli hartanah tersebut, perayu juga tidak dapat membuktikan kemunasabahan kewujudan amanah berbangkit untuk pihaknya apabila hartanah tersebut didaftarkan di atas nama simati. Jikapun perayu berjaya membuktikan yang dia telah membayar untuk hartanah tersebut dengan duitnya sendiri, dia perlu menunjukkan bahawa hartanah tersebut didaftarkan atas nama si mati bukan sebagai pemberian kepada si mati, tetapi sebagai pemegang amanah untuk perayu sebagai amanah berbangkit. Di dalam kes ini, perayu tidak sahaja gagal menolak beban membukti yang dia telah bayar untuk hartanah tersebut, dia juga gagal membuktikan beban tambahan bahawa si mati memegang hartanah tersebut untuk pihaknya.

(2) Pada masa pembelian hartanah tersebut oleh ayah perayu, tidak ada kepastian tersirat, apa lagi nyata, bahawa kepentingan benefisial adalah kepada perayu. Keterangan jelas menunjukkan bahawa pembelian dibuat oleh ayah perayu, yang mana keterangan tidak dipertikaikan atau ditolak. Berikutnya, tiada apa di dalam keterangan yang menunjukkan kemunculan kepentingan perayu untuk menggantikan kepentingan si mati. Perayu telah mengatakan dia telah membayar wang keluar, taksiran dan cukai tanah dan bahawa dia mempunyai milikan dan kawalan hartanah tersebut hanya atas alasan dia mempunyai suratikatan hakmilik hartanah tersebut. Ini, bagaimana pun, bukan keterangan yang dia memiliki hartanah tersebut. Perayu hanya membuat kenyataan yang dia telah menujukkan kepada si mati bahawa walau pun hartanah tersebut didaftarkan di atas namanya, dia telah menerangkan kepadanya bahawa ia bukan sebarang pemberian. Hakikatnya, keterangannya sendiri yang dia telah mengikut arahan ayahnya untuk mendafatrkan hartanah tersebut di atas nama si mati mengkukuhkan saranan bahawa ayah perayulah yang telah bayar dan memiliki hartanah tersebut dan mempunyai kawalan ke atasnya. Adakah perayu akan melaksanakan arahan ayahnya untuk mendaftarkan hartanah tersebut ke atas nama si mati jika tanah tersebut milikannya, jika pun dia sungguh taat kepada ayahnya? Dia lebih baik membuat pemberian yang ketara

kepada ibunya. Tetapi jika dia tidak ada niat tersebut perayu semestinya mempunyai keterangan dokumentar atau lisan untuk melindungi aset-aset yang sukar diperoleh olehnya. Tetapi tiada apa yang diberikan. Perayu hanya mengatakan yang dia telah memberitahu si mati bahawa walau pun hartanah tersebut telah didaftarkan di atas namanya, mereka sepatutnya dipegang secara amanah untuk perayu. Si mati, walau bagaimanapun, mempertikaikan tuntutan perayu dengan menentangnya di Mahkamah Sesyen atas isu itu, yang lebih membuktikan anggapan amanah berbangkit telah ditolak. Si mati, dalam tujuannya memilik kembali rumah Jalan Balau, menafikan perayu telah membayar wang keluar, taksiran dan cukai tanah. Dia berkata bahawa suaminya, ayah perayu, telah membayar yang sama dan selepas dia meninggal dunia, si mati membuat bayaran tersebut. Berdasarkan itu, perayu gagal membuktikan bahawa dia yang membayar untuk hartanah tersebut. Berkaitan itu, soal amanah berbangkit untuk perayu tidak berbangkit langsung. Akibatnya, tiada apa-apa sebab bagi campur tangan rayuan di dalam kes ini. *Loo Hon Kong v. Loo Kim Lim* (dibezakan).

Case(s) referred to:

Black Uhlans Inc v. New South Wales Crime Commission [2002] NSWSC 1060 ***(refd)***
Cossey v. Bach [1992] 3 NZLR 612 ***(refd)***
Loo Hon Kong v. Loo Kim Lim [2004] 4 CLJ 1 CA ***(dist)***
Midland Bank plc v. Cooke [1995] 4 All ER 562 ***(refd)***
Pettit v. Pettit [1970] AC PI 777 ***(refd)***
Po Kin & Anor v. Po Shein AIR [1926] PC 77 ***(refd)***
Re Vanderuell's Trusts (No 2) [1972] 1 Ch 269 ***(refd)***
Westdeutsche Landesbank Girozentrale v. Islington London Borough Council [1996] AC 669 ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 102

For the appellant - Dato VK Lingam (R Thayalan with him); M/s R Thayalan
For the respondent - Tan Jin Wah; M/s Tan Jin Wah

[Appeal from High Court, Johor Bahru; Civil Suit No: 22-167-1990]

Reported by Suresh Nathan

A

JUDGMENT

Zainun Ali JCA:

[1] In this appeal, the appellant failed in the court below in the reliefs sought *inter alia*, that he is the beneficial and equitable owner of two properties ie, property No: 37 Jalan Serigala, Johor Bahru which is a single story shop house and property No: 21 Jalan Balau, Johor Bahru a double storey bungalow (hereinafter referred to as the 'subject properties'). The learned trial judge dismissed the appellant's claim. His Lordship found that the appellant's mother (the 'deceased') did not hold the above properties on trust in the appellant's favour; that the appellant's income made it impossible for him to have afforded the properties concerned, thus he could not have paid for them; that in fact the deceased was the legal and beneficial owner of the said properties.

The Appellant's Case

[2] It is the appellant's case that he utilized his own savings and income to purchase the following properties, namely:

(i) A property held under Grant 23385 Lot 9372 together with a double storey bungalow known as No: 21, Jalan Balau, Johor Bahru for $74,000 by agreement of sale and purchase dated 16 April 1978 ('the Jalan Balau bungalow'); and

(ii) The property held under HS(D) 26817 PT TLO 2990 Johor Bahru together with a single storey shop-house known as No: 37 Jalan Serigala, Johor Bahru for $84,000 by sale and purchase agreement dated 22 August 1979 ('the shop-house').

[3] The appellant claimed that he purchased the subject properties but had them registered in his mother's name (the deceased) upon his father's request. The appellant claimed that the deceased held the properties in trust for him and would have them transferred to him on demand. The appellant had filed a suit against the deceased to recover the subject properties. The deceased passed away on 5 October 1992 and by order of court of 20 January 1993, the respondent (the appellant's younger brother) who was the executor of the deceased's estate, was substituted to carry on proceedings on behalf of the deceased's estate.

[4] The appellant sought several reliefs in the court below. He sought the following declarations: A

(i) that the deceased held both the said properties in trust for him;

(ii) that he is the beneficial owner of the said properties; B

(iii) that the deceased is a constructive and/or resulting trustee in respect of the said properties for him; and

(iv) that the deceased is presumed to him as 'trustee de son tort' of the said properties. C

[5] The appellant also prayed, for the following orders:

(a) that the respondent execute a valid and registrable instrument of trust of the shop-house to the appellant; and D

(b) that the respondent do quit and deliver vacant possession of the shop-house to the appellant, notwithstanding that the shop-house has been sold by the deceased by sale and purchase agreement dated 4 July 1990 to one Harry Roy Nanda who is not a party to the proceedings. E

[6] The appellant's case is that the entire purchase price of the said subject properties came from account No. 03-035-712 with the Hongkong and Shanghai Banking Corporation. This account is in the joint names of the appellant and his father, Choong Ah Kow ('the joint account'). The appellant claimed that his father's contribution towards the said joint account was minimal, because due to his meager salary and financial commitment to his family, nothing much was left by his father by way of savings in the joint account. On the other hand, the appellant claimed that from the very first day of his working life with a Singapore company, he had deposited all his income into this joint account. He claimed that he did not withdraw any monies from the said joint account for household and personal expenses. That together with his salary and travelling allowances and claims his portion in the joint account was substantial enough for him to have purchased the subject properties. F G H

[7] The appellant gave details of his purchases of the subject properties in this manner: I

A **The Bungalow At No: 21 Jalan Balau, Johor Bahru**

[8] In claiming that he had solely and fully contributed in the purchase of the above said property the appellant contended that the purchase price was $74,000 from which he paid $7,400 ie, 10% initially. This was made by cheque of the joint account at HSBC Johor Bahru. The legal firm of M/s L.M. Ong issued the receipt.

[9] Further payments of $10,000 and $56,000 were paid by cheques from the joint account. The balance was paid by cashier's order issued by OCBC Johor Bahru.

[10] The fees for M/s L.M. Ong of $1,286 was paid by cheque from the same joint account. The appellant claimed that all the above payments were his money and paid by him.

[11] It is the appellant's contention that the source for the above purchase (21, Jalan Balau) came from the sale of his house at 25, Jalan Gelam, Majidee Park, Johor Bahru.

[12] It is the appellant's contention that out of the Jalan Gelam house sale, $25,000 was utilized to buy the bungalow house. The balance of $34,700 from the sale of the Jalan Gelam house was used to buy the shop house.

[13] The learned trial judge had doubted the veracity of the appellant's contention of his financial strength even before he purchased the Jalan Gelam house.

[14] The learned trial judge had ruled that "on a balance of probabilities, I am of the view that the plaintiff (appellant) has failed to prove that he had funds amounting to $38,000 to pay for the Jalan Gelam house which he claimed was paid by him in cash."

[15] The appellant countered the judge's finding and stressed that after deducting EPF/CPF his total income for the period between 1969 to 1972 was $18,818.63. The appellant claimed he earned transport allowances amounting to $7,000 from 1969 to 1972. The total figure is thus $25,024. The difference of $12,966 was made up from his mileage claims for three years, outstation allowances paid for the same period, allowance paid to him when he worked in Indonesia and the monies contributed to him by his wife who was a teacher.

[16] The appellant refuted his father's contention that he had money in the joint account, since he was not earning much as a clerk with Metal Box Company in Singapore. After working for 26 years, the appellant calculated that his father's CPF contribution was only about $34,817.40. The appellant emphasised the heavy financial burden his father had to bear to educate him and his siblings since his father had supported him when he studied in Scotland, and supported his sister financially when she studied medicine in the University of Singapore for five years. He said his father also supported another sister financially when she studied for four years and likewise for his younger brother who studied as a private student for his Higher School Certificate. All of them, the appellant contended were supported financially by his father. In view of the above the appellant contended that his father could not possibly have afforded to pay for the subject properties.

The Purchase Of The Shop-house – 37 Jalan Serigala, Johor Bahru

[17] It is the appellant's case that the other subject properties ie, the shop-house which cost $84,000 was paid for solely by him using his own money. The appellant gave the breakdown of the purchase of the same as follows:

(a) $34,700 was from the sale of the Jalan Gelam house.

(b) $30,000 was from the time deposit balance of $30,000.

[18] The appellant contended that the sum of $21,616.69 given by his employer, Ageliem Sdn. Bhd. as arrears, was mostly used to pay for the property. The appellant claimed that the total amount he paid was $84,000 plus legal fees of $1,569.40 and brokerage fees of $840.

[19] The appellant further contended that his total income was about $125,000 out of which he saved $60,000 which was deposited in a time deposit account.

[20] It is also the appellant's case he had the title deeds of the subject properties in his possession. This, he said, is consistent with the fact that he was the purchaser of both subject properties, and that the deceased was merely holding them in trust for him.

[21] The appellant also submitted that in view of the above mentioned facts and since he paid for all the quit rent and assessment and all other outgoings for both these properties ever since they were purchased, these properties are, undoubtedly held by the deceased on a resulting trust in his favour.

[22] Now, what do the facts and evidence show?

The Respondent's Case

[23] A brief account of the background as indicated by the respondent would help put matters in perspective.

[24] According to the respondent, the whole family initially stayed in a house at Jalan Wijaya, Johor Bahru. In view of the appellant's inpending marriage, their father purchased a house at Jalan Gelam. This evidence is contrary to that of the appellant who said that it was he who purchased the Jalan Gelam property. The whole family moved there, and the Jalan Wijaya house was rented out by their father.

[25] It is the respondent's evidence that four of his sisters gave their parents varying amounts of monthly allowances.

[26] The first sister stayed with the family and worked as a clerk from 1965 until 1970 when she got married. She gave their parents about $100 monthly.

[27] His second sister was a teacher in 1969 and prior to her marriage in 1973, she gave about $200-$250 monthly to their parents. She continued giving them this allowance even after her marriage, though on an irregular basis. The third sister graduated as a doctor in 1975. She won a scholarship in her second year at university and it continued until she graduated. When she started work in 1976 she gave about $500-$600 monthly to her parents. She also made contributions to the respondent's educational expenses at Stirling University. The fourth sister was a teacher and gave her parents a monthly allowance of $300-$350.

[28] The respondent testified that the appellant himself did not make monthly contributions to the family ever since he worked. But after his marriage in 1972 he would give his parents $100 to $150 per month on an irregular basis.

[29] The respondent went on to say that as far as he knew, he himself was 'low maintenance' for his parents, in that when he was studying at Stirling University three of his sisters contributed a total sum of $850 per month for his education which was adequate for him to complete his studies there. In short, his parents either need not contribute or contributed minimally in financial terms towards his education at Stirling University in Scotland.

[30] The respondent therefore contended that against the above background, the appellant's contention that their father's contribution both towards the joint account and towards the purchase of the subject properties was minimal or nil, due to family commitment, could not have been entirely true. The father's financial burden was alleviated by his three daughters' monthly contributions to him and helping him out with the educational expenses of the appellant and respondent.

[31] It is not in dispute that the subject properties were registered in the name of the deceased. However it is the appellant's case that since it was with his money that the subject properties were purchased, the proprietorship thereof is governed by the equitable doctrine of 'resulting trust' in his favour (the appellant's).

[32] In short, the appellant contended that even if the subject properties were registered in the deceased's name, the monies were provided for by him and thus, the subject properties belong to him as equitable and beneficial owner.

[33] A 'resulting trust' is defined as such:

> This trust arises by presumption where one party buys property, registers it in the name of a second party in circumstances where the first party has supplied the money for the purchase. Thus the registered proprietor is presumed to hold the property on trust for the supplier of the money. (per Judith Sihombing in *"National Land Code: A commentary"*).

[34] The question whether there exists a resulting trust in the appellant's favour will be answered and expanded latterly.

[35] The respondent's answer to the appellant's claim of a resulting trust in his favour is to contend that the onus of proof lies squarely on the appellant to prove strictly by a preponderance of evidence that he was the true purchaser of the subject properties and that he had the financial means to do so.

[36] This basically means that the appellant has to identify the sources of funds for the purchase of the bungalow (which cost $74,000 plus $1,286 legal fees and disbursements) and purchase of the shop-house (which cost $84,000 plus $1,567 as legal fees and disbursement). The total sum is $160,853. The appellant has also to prove that it was with his monies that the subject properties were paid for.

[37] In that connection, the respondent submitted that the appellant must strictly prove that his income after deductions of EPF/CPF, income tax, family, personal and motorcar and other expenses left him with enough money to purchase the Jalan Gelam house for $38,000 in cash which the appellant said was his matrimonial home.

[38] The appellant has also to prove that he purchased the subject properties subsequently with his monies in the joint-account. The respondent quoted s. 102 of the Evidence Act which reads:

> The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Findings Of The Court

[39] After looking at the reliefs prayed for, and the evidence before me, I believe the starting point would be this:

(a) Whether the appellant can prove by oral or documentary evidence that he purchased the subject properties with his own money and

(b) If the answer to (a) is in the affirmative, whether in the light of surrounding circumstances the fact that it was registered in his deceased mother's name gives rise to a resulting trust in the appellant's favour.

[40] Firstly the documentary evidence at the trial reflected the appellant's total declared nett income (ie, after the necessary deductions of EPF and income tax from 20 October 1969 to end of 1972) was $12,274.91. He took a car loan of $3,000 and after deducting monthly payments the amount he had would be reduced to $9,274.91. The appellant claimed that his earnings, mileage claims and allowances were saved and deposited into the joint account. With that money, the appellant said he bought the $38,000 single storey bungalow house (the Jalan Gelam house) which was paid in cash. He said this became his matrimonial home when he got married in December 1972.

[41] However under cross-examination he admitted that his mileage claims and allowances were actually reimbursements for monies he had spent. The appellant was also unable to show documentary proof of these allowances.

[42] The appellant claimed that he sold the Jalan Gelam house on 19 March 1978 for $61,000 and deposited the proceeds of sale between the period of March 1978 and July 1978 into the joint accounts as follows:

(i) $5,000 – 20 March 1978

(ii) $20,000 – 6 April 1978

(iii) $30,000 – 20 June 1978

(iv) $4,700 – 17 July 1978.

[43] The appellant said that he bought a bungalow at Jalan Balau, which cost $74,000 but paid the developer only $25,000 initially. Thus instead of paying the balance amount due for the bungalow, the appellant said he used the balance of the sale of the Jalan Gelam house (amounting to $34,700) to purchase the shop-house for $84,000.

[44] The appellant was adamant that all the monies used to purchase both the bungalows and the shop-house were his own monies which he said he had deposited in the joint-account. He claimed that his father had not much left in the joint account after expending monies on his family of four growing daughters and a son.

[45] He said that his mother (the deceased) was a housewife and so had no income of her own. With his father's commitment to support his sister who was studying medicine at the University of Singapore and supporting him (the appellant) at a private college, his father's contribution towards the joint account was almost zero.

[46] The appellant said that his father had to sell their family house in Jalan Wijaya in 1978 for $52,000 to pay for the respondent's education at Stirling University, Scotland. Though his father deposited the proceeds of the sale of the Jalan Wijaya house into the joint account, the appellant said those monies were never utilised to make payment towards the purchase of the subject properties.

[47] After carefully perusing the material before me, I find no good reason to interfere with the findings of fact of the learned trial judge, that:

(i) the sale and purchase agreement of the Jalan Gelam house dated 29 October 1972 was executed by the appellant's father as purchaser;

(ii) DW1, (solicitor) prepared the trust deed and power of attorney upon instruction by the appellant's father. These documents were executed by the appellant in favour of the appellant's father prior to the property being transferred and registered in the appellant's name.

The appellant was registered as proprietior of Jalan Gelam House on 15 February 1973.

(iii) DW1 explained that the purpose of the trust deed was for the appellant to hold the property for the benefit of his father and heirs.

[48] DW1's evidence was not challenged. But what is crucial is, it was the appellant's father who paid for the above said property. This evidence was not challenged.

[49] Consequently, I am unable to find any good reason to interfere with the trial judge's findings of fact that when the Jalan Gelam house was sold in 1978, the solicitors acting for the purchasers of the said house acknowledged that they received the title deed of the said property, the power of attorney and receipts

for quit rent from 1971 to 1978 and receipt for assessment (for 1972-1978), from the appellant's father. Thus it is apparent that though the Jalan Gelam house was registered in the appellant's name, the appellant's father retained the title deed and all other documents related to the property. These by themselves provide eloquent testimony of possession, control and ownership, strengthened by evidence of payment of the property, on the unchallenged testimony of the conveying solicitor.

[50] In view of the above, clearly the appellant's submission that he paid cash of $38,000 in 1972 for the Jalan Gelam house is not sustainable. I find that even on a balance of probabilities the evidence does not tilt in the appellant's favour.

[51] As evidence have shown, his nett earnings up to the end of 1972 was only $9,271.91 less EPF/CPF deduction and less the $3,000 car loan – not taking into account his living expenses nor the $2,000 down payment for the purchase of the motorcar which he said came from his savings.

[52] Though the appellant tried to show he had other income, namely his travel allowances for working trips to Indonesia and East Malaysia, the documentary proof of such claims never surfaced.

[53] I agree with the learned trial judge's finding that the appellant had failed to prove that he had $38,000 which he said he had saved from his income and mileage claims and allowances to pay for the Jalan Gelam house.

[54] The appellant's contention with regard to his purchase of the Jalan Balau house, suffered the same fate. The official receipts issued by DW1's law firm for the purchase and legal fees for purchase of the Jalan Balau house, showed that they were all issued in the name of Choong Ah Kow (the appellant's father). Thus it was the appellant's father who made the payment, clearly rebutting the appellant's contention that he paid for it. The deceased was registered as proprietor of the Jalan Balau house on 7 August 1978.

[55] With regard to the No: 37 Jalan Serigala shophouse, the sale and purchase agreement dated 22 August 1979 showed the appellant's father as the purchaser, for the amount of $8,000 (bills and payment receipts of purchase price issued in his name). The

A appellant's father also wrote a letter dated 27 October 1979 to the vendor, asking for the property to be transferred to the deceased.

[56] However the appellant's trump card was that he had
B possession of the two title deeds of the subject properties; and that this fact is evidence of his interest both legally and beneficially that he purchased the subject properties. Curiously, it is noted that this simplistic notion was never raised in the court below.

C **[57]** I find that the trial judge was correct in holding that the appellant did not purchase the subject properties. The sources of fund did not show the appellant as contributor. The documentary evidence is clear. The appellant could not have purchased the first property (the Jalan Gelam house) for $38,000 from savings of
D salaries and allowances as his total nett earning as shown in his income tax assessment 1969-1972 was $9,274.91 (see p. 38 AR). His claim that he purchased the second property for $74,000 (the Jalan Balau house) from savings is also dubious; this is because his total nett earning as shown in his income tax returns for 1973-
E 1978 was $88,023.42 (see p. 586-591 AR) – out of which $17,627.36 was stashed away in a fixed deposit in a bank, thus his total earnings available at time of purchase ie, on 16 April 1978 was $70,396.06. Taking into account his financial commitments such as deduction for personal and family expenses,
F payment of car loans, income tax and EPF contributions etc., even if there are savings it would be a herculean task indeed for the appellant to have to come up with the purchase price of $74,000 (not including stamp duty and legal fees) to purchase the Jalan Balau house.

G **[58]** This is not even taking into account the fact that the appellant lost his job in August 1980. It made his financial position even more precarious. Based on the above, chances are that his savings were used up for his daily expenses and thus what is then left to afford him the purchase of the subject properties?

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[59] Quite apart from his failure to show he had the means to purchase the subject properties, the appellant had also failed to show the plausibility of the existence of a resulting trust in his favour when the subject properties were registered in the name of
I the deceased.

[60] Even if the appellant successfully proves that he paid for the subject properties with his own money, he has to go one step further. He has to show that they were registered in the deceased's name not as a gift *per se* to her, but as his trustee, holding it in his favour, on a resulting trust. In the instant case the appellant had not only failed to dislodge the burden of having to prove he paid for the subject properties, he had also failed the additional burden of proving the deceased held them in trust for him.

[61] The burden is a heavy one, as Lord Chancellor in *Po Kin & Anor v. Po Shein* AIR [1926] PC 77 said:

> ... the person who alleges that property conveyed to another belongs to him must prove his allegation and prove it beyond reasonable doubt ...

[62] The onus being such, I am unable see how the appellant's case, based on the evidence adduced by him as it were, can hold up to scrutiny.

[63] I shall now address the issue central to the appellant's defence ie, whether there is resulting trust in his favour.

[64] As alluded to earlier, a resulting trust arises when one person (the settlor) confers title to property on another person but the settler retains beneficial ownership of the property, in whole or in part. (*Cossey v. Bach* [1992] 3 NZLR 612).

[65] The legal interest vests in the title holder (the trustee) whereas the beneficial interest results to the settlor. In the instant case the appellant's contention is that the legal interests in the subject property vest in the deceased, whilst the beneficial interest result to him since he paid for the subject properties.

[66] It would be instructive to clearly define resulting trusts, which have been classified into two main categories:

(i) presumed resulting trust and

(ii) automatic resulting trust.

[67] In (i) above, the matter 'is one of intention, with the rebuttable presumption of a resulting trust applying if the intention is not manifest'.

[68] In the case of (ii) above, there is no mention of any expression of intention in an instrument or of any presumption of a resulting trust: the resulting trust takes effect by operation of law and so appears to be 'automatic' (Re Megarry J in *Re Vanderuell's Trusts (No 2)* [1972] 1 Ch. 269).

[69] Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v. Islington London Borough Council* [1996] AC 669, 708 dealt with the very limited and well established circumstances in which a resulting trust may arise. His Lordship observed that:

> ... (A) Where A makes a voluntary payment to B or pays (wholly or in part for the purchase of property which is vested either in B alone or in the joint names of A & B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A & B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter presumption of advancement or by direct evidence of A's intention to make an outright transfer.
>
> (B) Where A transfers property to B on express trust, but the trusts declared do not exhaust the whole beneficial interest. Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but given effect to his presumed intention.

[70] Since the existence of a resulting trust is premised on the presumed intention of the parties to a particular type of transaction, it arises at the time of transaction.

[71] This means that, at the time of its creation there must be certainty of beneficial interest under a resulting trust (See *Midland Bank plc v. Cooke* [1995] 4 All ER 562 at 574). Secondly, flowing from this first point, evidence of the actual intention of the parties' subsequent to the date at which the resulting trust is created (ie, the date of the transaction) cannot serve to rebut the presumed intention that gave rise to the trust in the first place.

[72] As explained by Campbell J in *Black Uhlans Inc v. New South Wales Crime Commission* [2002] NSWSC 1060: A

> ... In deciding whether a presumption of resulting trust had been rebutted, it would be necessary for the court to take into account not only evidence going to the intention of the provider of the money which tended to cut down the presumption of resulting trust, but also any evidence which tended to strengthen the finding about intention which that presumption dictates. Only by taking into account both evidence which tends to cut down the presumption and evidence which tends to strengthen the finding about intention which the presumption dictates can the court reach a conclusion about whether, on the whole of the evidence, the presumption has been rebutted. The sort of conduct which could possibly be taken into account in this way could include who took occupation and control of the property, who made improvements to it and in what circumstances, who paid periodical outgoings on the property, who received any rent from the property, and who paid income tax on any rent received from the property. To the extent that any of these types of transaction occurred at a time which was not so immediately thereafter as to constitute a part of the transaction, they could be taken into account only to the extent that they were admissions. B C D E

[73] Going by the above observation, and looking at the instant appeal, the appellant seems to have fallen far short of proving his claim.

[74] Firstly, at the time of the purchase of both the subject properties by the appellant's father, there was not an implied, let alone an express certainty that it was upon the appellant that the beneficial interest lie. The only clear evidence is that the purchases were made by the appellant's father which evidence had not been disputed nor rebutted. Following that, nothing was in evidence as to how the appellant's interest could have come about, which must supercede that of the deceased's. F G

[75] Though the appellant relied on the authority of *Loo Hon Kong v. Loo Kim Lim* [2004] 4 CLJ 1 at 9, 10 to support his claim, the above authority is of little help to him. This is simply because in the above case, the fact that the plaintiff paid for the entire purchase price for the land was undisputed and clearly established. The issue in that case, was that, since the land was registered in the defendant's name thus vesting legal ownership in the defendant, and because the relationship between the appellant H I

and defendant does not come within the one of the categories recognised by equity as creating a presumption of advancement in favour of the defendant (as holder of the legal title), the beneficial ownership results to the plaintiff. However, in the instant appeal, the appellant cannot have recourse to the above authority to support him because the fundamental issue of whether the appellant paid for the subject properties had not even been established by him.

[76] The appellant had indicated that he paid for the outgoings, assessment and quit rents and that he had possession and control of the subject properties merely on the flimsy account that he had in his possession the title to them. As alluded to earlier, this is not evidence that he owns the subject properties.

[77] The appellant only made a bare assertion that he had indicated to the deceased that even if he had the subject properties registered in her name he had made it clear to her that it was not intended as a gift.

[78] In fact, his very own evidence that he took his father's instructions to have the properties registered in the deceased's name considerably strengthened the proposition that it was his father who paid and owned the subject properties and was in control thereof. Would the appellant execute his father's instructions to have the properties registered in the deceased's name if it is true that the properties were his, however filial a son he is? He might as well make an outright gift to his mother. But if he had no such intention the appellant would surely have some documentary or written evidence to protect his hard earned assets. But none was forthcoming.

[79] The appellant merely said that he had told his mother (the deceased) that though the properties were registered in her name they were to be held by her, in trust for him. This is what he said in evidence:

> ... I did explain to my mother that those two properties were really my properties and paid by me and that she is only holding the properties in her name in trust for me. I told her that she will have to transfer both the properties to me when I request her to do so ... . (See pages 114 and 115 A.R. Vol.5)

[80] The appellant's bare assertion as it were, was juxtaposed when the deceased disputed the appellant's claim by filing a suit against him in the Sessions Court on this very point, which further strengthened the presumption of resulting trust having been rebutted.

[81] In such a situation, even if there was a resulting trust, this can easily be rebutted by parol evidence. This the deceased did by testifying in the Sessions Court to recover possession of the 25, Jalan Balau House. There, the deceased testified denying that the appellant paid the quit rent, outgoings and assessment. She said it was her husband (the appellant's father) who paid the same during his lifetime. And that after he died she paid for them. In the words of Lord Upjohn in *Pettit v. Pettit* [1970] AC PI 777 "... all resulting trusts which arise simply from equitable presumptions may be rebutted by parol evidence ..."

[82] In view of the foregoing, I am satisfied that the appellant had failed to prove that it was he who paid for the subject properties. In that connection, the question of resulting trust in the appellant's favour does not arise at all.

[83] Consequently, I find no reason at all for appellate intervention in this case. My learned brothers Gopal Sri Ram, JCA and Hassan Lah JCA, have read this judgment in draft and have expressed agreement with it to become the judgment of this court. In view of the reasons given above, the decision of the High Court is affirmed. This appeal is hereby dismissed with costs. Deposit to the respondent to account for taxed costs.